

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into among: the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"), TRICARE Management Activity ("TMA"), and the Office of Personnel Management ("OPM") (collectively the "United States"); the Relators as identified in Paragraphs C through I of the Preamble to this Agreement ("Relators"); and Bristol-Myers Squibb Company ("BMS") and Apothecan, Inc. ("Apothecon"). Collectively, all of the above will be referred to as "the Parties."

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

- A. WHEREAS, at all relevant times, BMS, a Delaware corporation headquartered in New York, New York, marketed and sold pharmaceutical products in the United States;
- B. WHEREAS, at all relevant times, Apothecan was a wholly-owned subsidiary of BMS;
- C. WHEREAS, on or about June 23, 1995, Ven-A-Care of the Florida Keys, Inc. ("Ven-A-Care"), Zachary T. Bentley and T. Mark Jones (collectively, the "VAC 1 Relators") filed a qui tam action in the United States District Court for the Southern District of Florida captioned United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Bristol Myers Squibb Co., Civil Action No. 95-1354 (S.D. Fla.); and, on or about December 11, 2002, Ven-A-Care,

Bentley, and Jones filed a Fourth Amended Complaint in the Southern District of Florida under the same caption and case number and this Fourth Amended Complaint sets forth the current allegations in the qui tam action;

D. WHEREAS, on or about April 12, 2000, Ven-A-Care, Zachary T. Bentley, T. Mark Jones, John M. Lockwood, and Luise B. Cobo (the "VAC 2 Relators") filed a qui tam action in the United States District Court for the District of Massachusetts captioned United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Apothecon, Inc., Bristol-Myers Squibb Co., Civil Action No. 00-10698-MLW (D. Mass.); and, on or about February 15, 2005, Ven-A-Care, Bentley, and Jones filed a Third Amended Complaint in the same court under the caption United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Apothecon, Inc. Bristol-Myers Squibb Co., Civil Action No. 00-10698-MEL (D. Mass.);

E. WHEREAS, on or about October 17, 2000, Carol Forden filed a qui tam action in the United States District Court for the Northern District of New York captioned United States ex rel. Forden v. Bristol Myers Squibb; that action was transferred to the United States District Court for the District of Massachusetts on or about February 4, 2004; and on or about February 3, 2005, Forden filed a Third Amended Complaint captioned United States ex rel. Forden v. Bristol Myers Squibb, Civil Action No. 04-11216-RGS (D. Mass.);

F. WHEREAS, on or about September 24, 2001, Kathy Cokus filed a qui tam action in the United States District Court for the District of Massachusetts captioned United States ex rel. Cokus v. Bristol-Myers Squibb Co., Civil Action No. 01-11627-RGS (D. Mass.);

G. WHEREAS, on or about July 9, 2004, Phillip Barlow filed a qui tam action in the United States District Court for the District of Massachusetts captioned United States ex rel. Barlow v. Bristol-Myers Squibb Co., Civil Action No. 04-11540-MLW (D. Mass.);

H. WHEREAS, on or about February 3, 2005, Joseph Piacentile filed a qui tam action in the United States District Court for the District of Massachusetts captioned United States ex rel. Piacentile v. Bristol-Myers Squibb Co., Civil Action No. 05-10196-MLW (D. Mass.);

I. WHEREAS, on or about May 4, 2006, Daniel Richardson filed a qui tam action in the United States District Court for the District of Columbia captioned United States ex rel. Richardson v. Bristol Myers Squibb; and, subsequently, that action was transferred to the United States District Court for the District of Massachusetts and is currently pending in that district under Civil Action No. 06-11821-NG (D. Mass.);

The qui tam actions identified in Paragraphs II(C) through (I) shall be referred to collectively as the "Civil Actions."

J. WHEREAS, at all material times, BMS participated in the Medicaid Drug Rebate Program, 42 U.S.C. § 1396r-8, which is part of the federal Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v. As a participant in the Medicaid Drug Rebate Program, BMS entered into a rebate agreement with the Health Care Financing Administration ("HCFA"), now known as the Centers for Medicare and Medicaid Services ("CMS"), and BMS's drug products were covered by state Medicaid plans that provided medical assistance for outpatient prescription drugs. 42 U.S.C. §§ 1396a(10)(A), 1396d(a)(12), and 1396r-8(a)(1).

Under the Medicaid Drug Rebate Program and its rebate agreement with HCFA, BMS generally agreed: (i) to report quarterly to HCFA its average manufacturer price and, for single source and innovator multiple source drugs, best price for its drug products, as defined by 42 U.S.C. §§ 1396r-8(k)(1) and 1396r-8(c)(1)(C); and (ii) to pay quarterly rebates to each state based on the product of (a) the units of each dosage form and strength paid for under the State Medicaid plan during the rebate period as reported by the state, and (b) the greater of the difference between the average manufacturer price and best price, or a minimum rebate percentage of the average manufacturer price, as further defined in 42 U.S.C. § 1396r-8(c)(1);

K. WHEREAS, at all material times, BMS participated in the Drug Pricing Program, 42 U.S.C. § 256b, which is part of the Public Health Service ("PHS") Act, 42 U.S.C. §§ 201-300gg-92. Under the Drug Pricing Program and its agreement with HHS, BMS generally agreed that the amount that BMS required the "covered entities," as set forth under Section 340B(a)(4) of the PHS Act, to pay for drug products would not exceed the average manufacturer price, as reported by BMS to HCFA in the previous calendar quarter, minus a specified rebate percentage that was derived in part from the Medicaid rebate paid by BMS in the preceding calendar quarter for each drug, as further described in 42 U.S.C. § 256b(a);

L. WHEREAS, BMS and Apothecon have entered into or will be entering into separate settlement agreements (hereinafter referred to as the "Medicaid State Settlement Agreements") with the states that will be receiving settlement funds from BMS pursuant to Paragraph III(1)(b) below for the Covered Conduct described in Paragraph N below (hereinafter referred to as the "Medicaid Participating States");

M. WHEREAS, the United States alleges that BMS and Apothecon caused to be submitted claims for payment for its drugs to the Medicaid Program, the Medicare Program, established pursuant to Title XVIII of the Social Security Act, § 1395-1395hhh, the TRICARE Program (formerly known as the Civilian Health and Medical Program of the Uniformed Services), 10 U.S.C. §§ 1071-1106, and the Federal Employees Health Benefit Program ("FEHBP"), 5 U.S.C. §§ 8901-14; and that BMS caused the Department of Veterans' Affairs ("DVA") to purchase its drugs;

N. WHEREAS, the United States contends that it and the Medicaid Participating States (hereinafter collectively referred to as the "Government") have certain civil claims against BMS and Apothecon as specified in Paragraph 2 below for allegedly engaging in the following conduct (hereinafter the "Covered Conduct"):

(1) The Government contends that, during the period from January 1994 through December 2001, Apothecon and BMS knowingly and willfully offered and paid illegal remuneration, such as stocking allowances, price protection payments, trade show payments, market share payments, prebates, and free goods to purchasers such as retail pharmacies and wholesalers and/or their employees and agents (collectively "purchasers") related to Apothecon's products in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(2). Furthermore, the Government contends that, during this time period, Apothecon and BMS knowingly caused the submission of false and/or fraudulent claims to Medicaid and Tricare by inducing these purchasers to purchase Apothecon's and BMS's products;

(2) The Government contends that, during the period from January 1991 through December 2000, Apothecon and BMS knowingly set, reported, and maintained, or caused to be set, reported, and maintained, false, fraudulent and inflated Wholesale List Prices, Direct Prices, and Average Wholesale Prices (the "Reported Prices") for certain drugs listed in Attachment A (the "Apothecon Covered Drugs") that were substantially higher than prices that were widely and commonly available, and knowingly used the artificial spread between the false, fraudulent and inflated Reported Prices and the actual acquisition costs of the Apothecon Covered Drugs in marketing, promoting and selling the Apothecon Covered Drugs to its existing and potential customers. The Government further contends that Apothecon and BMS knew the false and fraudulent reporting and marketing schemes would cause their customers to submit false and fraudulent claims to Medicaid for reimbursement that were substantially higher than the customers' actual acquisition costs for the Apothecon Covered Drugs;

(3) The Government contends that, during the period from January 1999 through December 2003, BMS knowingly and willfully offered and paid illegal remuneration to physicians, and to some physician assistants and nurse practitioners, through consulting fees and expenses for participating in National Consulting Conferences, Regional Consulting Conferences, Clinical Advisory Councils, District Advisory Boards, Interactive Training Sessions, Preceptorships, and similar consulting programs, in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(2). The Government further contends that, during this time period, BMS knowingly caused the submission of false and/or fraudulent claims to Medicaid, Medicare, other federal health care programs, and caused DVA and the Department of Defense

("DOD") to purchase BMS drugs, by inducing these physicians, physician assistants, and nurse practitioners to prescribe and/or to recommend the prescribing of the BMS drugs listed in Attachment B;

(4) The Government contends that, during the period from January 2002 through December 2005, BMS knowingly promoted the sale and use of Abilify (aripiprazole) for pediatric use (i.e., for patients younger than 18) and to treat dementia-related psychosis, uses for which the United States Food and Drug Administration ("FDA") has not approved Abilify. The Government contends that BMS knowingly and willfully offered and paid illegal remuneration in the form of consulting arrangement fees to physicians to induce them to prescribe Abilify. The Government contends that BMS's promotion of Abilify for pediatric use and to treat dementia-related psychosis violated the Food, Drug and Cosmetic Act ("FDCA"), 21 U.S.C. §§ 331(a) & (d). Furthermore, the Government contends that, during the relevant time period, these uses were not medically-accepted indications, as defined by 42 U.S.C. § 1396r-8(k)(6) (uses approved under the FDCA or included in or approved for inclusion in specified drug compendia), and that certain State Medicaid Programs did not cover Abilify dispensed for these uses. In addition, the Government contends that, during this time period, BMS knowingly caused false and/or fraudulent claims to be submitted to Medicaid, TRICARE, and FEHBP for Abilify, and caused the DVA and DOD to purchase Abilify, for pediatric use and for dementia-related psychosis;

(5) The Government contends that, from Third Quarter 1996 through Second Quarter 1997, BMS knowingly misreported its best price to CMS and underpaid its Medicaid rebates for Serzone by omitting the price of Serzone that was private-labeled for Kaiser from its

determination of best price. Further, the Government contends that, from First Quarter 1997 through Fourth Quarter 1997, BMS overcharged the PHS entities for Serzone as a result of omitting the price of private-labeled Serzone from its best price calculations;

(6) The Government contends that, during the period from January 1993 through December 2002, BMS knowingly set, reported and maintained, or caused to be set, reported, and maintained, false, fraudulent, and inflated Wholesale List Prices, Direct Prices, List Prices, and Average Wholesale Prices (the "Reported Prices") for the drugs listed in Attachment C (the "AWP Covered Drugs") that were substantially higher than prices that were widely and commonly available, and knowingly used the artificial spread between the false, fraudulent, and inflated Reported Prices and the actual acquisition costs of the AWP Covered Drugs in marketing, promoting, and selling the AWP Covered Drugs to its existing and potential customers. The Government contends that BMS knew that the false and fraudulent reporting and marketing schemes would cause their customers to submit false and fraudulent claims to Medicare and Medicaid for reimbursement that were substantially higher than the customers' actual acquisition costs for the AWP Covered Drugs;

O. WHEREAS, the United States contends that it has certain administrative claims against BMS, as specified in Paragraphs 4-6 below, for engaging in the Covered Conduct;

P. WHEREAS, this Agreement is neither an admission of facts or liability by BMS or Apothecon nor a concession by the Government that its claims are not well founded;

Q. WHEREAS, BMS and Apothecon deny the contentions of the United States and the Relators as set forth herein and in the Civil Actions and further deny any liability or wrongdoing related to those contentions;

R. WHEREAS, to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these claims, the Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth below in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. BMS agrees to pay to the United States, the Medicaid Participating States, and the PHS entities, collectively, the sum of four hundred ninety-nine million dollars (\$499,000,000), plus interest in an amount of 4.5% per annum from January 1, 2007, and continuing until and including the day before complete payment is made (the "Settlement Amount"). This sum shall constitute a debt immediately due and owing to the United States and the Medicaid Participating States on the Effective Date of this Agreement subject to the terms of this Agreement and the Medicaid State Settlement Agreements. This debt is to be discharged by payments to the United States and the Medicaid Participating States, under the following conditions:

a. BMS shall pay to the United States the sum of three hundred seventeen million, four hundred thirty-six thousand, and eighty-one

dollars (\$317,436,081), plus interest in an amount of 4.5% per annum (\$39,135.96 per day) from January 1, 2007, and continuing until and including the day before complete payment is made (the "Federal Settlement Amount"). The Federal Settlement Amount shall be paid by electronic funds transfer pursuant to written instructions to be provided by the United States. BMS agrees to make this electronic funds transfer no later than seven days after the Effective Date of this Agreement.

b. BMS shall pay to the Medicaid Participating States the sum of one hundred eighty-one million, four hundred thirty-nine thousand, nine hundred nineteen dollars (\$181,439,919), plus interest accrued thereon at a rate of 4.5% per annum (\$22,369.31 per day) from January 1, 2007, continuing until and including the day before complete payment is made (the "Medicaid State Settlement Amount"), under the terms and conditions of the Medicaid State Settlement Agreement. This Medicaid State Settlement Amount shall be paid by electronic funds transfer pursuant to written payment instructions from the negotiating team for the Medicaid Participating States.

c. BMS shall pay to the PHS entities the sum of one hundred twenty-four thousand dollars (\$124,000) (the "PHS Settlement Amount"). BMS agrees to present for review and audit the underlying calculations used to determine the correct price(s) for the PHS entities during the relevant time periods. BMS agrees that if it is determined that BMS owes any additional amounts to any PHS entity, based upon the allegations in the Covered Conduct, BMS agrees to pay any additional amount required to make that entity whole. The PHS Settlement

Amount shall be paid by BMS to each affected PHS entity by check within sixty (60) days after the Effective Date of this Agreement.

d. Of the amount identified in Paragraph 1(a) above, a portion determined by the United States constitutes disgorgement of profits under the FDCA resulting from the Covered Conduct described in Preamble Paragraph N(4).

e. Contingent upon the United States receiving the Federal Settlement Amount from BMS, the United States agrees to pay, as soon as feasible after receipt, the following amounts to the Relators, plus the pro rata share of the actual accrued interest paid to the United States by BMS on the amounts below from January 1, 2007, through the Payment Date:

Ven-A-Care: \$24,904,350

Forden: \$2,046,582

Cokus: \$3,876,200

Barlow: \$235,992

Piacentile: \$7,256,400

Richardson: \$12,301,611

2. Subject to the exceptions in Paragraphs 3, 4, 5, and 6 below, in consideration of the obligations of BMS in this Agreement, conditioned upon BMS's full payment of the Settlement Amount, and subject to Paragraph 22 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and

departments) agrees to release BMS and Apothecon, their predecessors, and their current and former parents, affiliates, divisions, subsidiaries, successors and assigns, and their current and former directors, officers, and employees, from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under: the False Claims Act, 31 U.S.C. §§ 3729-33; the Food Drug and Cosmetic Act ("FDCA") (as to Abilify only), 21 U.S.C. §§ 331(a), 331(d) and 332; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-12; the Medicaid Drug Rebate Statute, 42 U.S.C. § 1396r-8; the Drug Pricing Program, 42 U.S.C. § 256b; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; any statutory provision applicable to federally-funded programs in this Agreement for which the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part O, Subpart I, § 0.45(d) (1995); and common law theories of fraud, unjust enrichment, payment by mistake, breach of contract, or disgorgement.

3. Notwithstanding any term of this Agreement, the United States specifically does not release any person or entity from any of the following claims or liabilities: (a) any criminal, civil, or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code); (b) any criminal liability; (c) any liability to the United States (or any agencies thereof) for any conduct other than the Covered Conduct; (d) any claims based upon obligations created by this Agreement; (e) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs; (f) any express or implied warranty claims or other claims for defective or deficient products and services provided by BMS; (g) any claims for personal injury or property damage or for other consequential damages

arising from the Covered Conduct; (h) any claim based on a failure to deliver items or services due; (i) any liability of individuals, including officers and employees, who receive written notification that they are the target of a criminal investigation, who are criminally indicted, charged, or convicted, or who enter into a criminal plea agreement; or (j) with the exception of liability for the conduct and the programs described in Paragraphs II(N)(3) and N(4), any liability that may attach from BMS conduct or activity to market or promote any of the drugs listed in Attachment B (except for Abilify) for uses not approved by the Food and Drug Administration.

4. In consideration of the obligations of BMS set forth in this Agreement, and the Corporate Integrity Agreement entered into between OIG-HHS and BMS, conditioned on BMS's payment in full of the Settlement Amount, and subject to Paragraph 22 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against BMS or Apothecon, their predecessors, and their current or former parents, affiliates, divisions, subsidiaries, successors, and assigns, under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks or other prohibited activities), for the Covered Conduct, except as reserved in Paragraph 3 above, and as reserved in this Paragraph. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude BMS from the Medicare, Medicaid, or other Federal health care programs

under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 3 above.

5. In consideration of the obligations of BMS set forth in this Agreement, conditioned upon BMS's full payment of the Settlement Amount, and subject to Paragraph 22 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), TMA agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion or suspension from the TRICARE Program against BMS and Apothecon, their predecessors, their current or former parents, affiliates, divisions, subsidiaries, successors and assigns, and their current and former directors, officers, and employees, under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 3 above, and as reserved in this Paragraph. TMA expressly reserves its authority under 32 C.F.R. § 199.9(f)(1)(i)(A) and (f)(1)(i)(B) based upon the Covered Conduct, and under 32 C.F.R. § 199.9(f)(1)(iii) if any entity is excluded by OIG-HHS pursuant to 42 U.S.C. § 1320a-7(a). Nothing in this Paragraph precludes TMA or the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 3, above.

6. In consideration of the obligations of BMS set forth in this Agreement and conditioned upon BMS's full payment of the Settlement Amount, and subject to Paragraph 22 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), OPM agrees to release and refrain from

instituting, directing, or maintaining any administrative action seeking debarment from FEHBP against BMS and Apothecon, their predecessors, their current or former parents, affiliates, divisions, subsidiaries, successors and assigns, and their current and former directors, officers, and employees, under 5 U.S.C. § 8902a or 5 C.F.R. Part 890 for the Covered Conduct, except as reserved in Paragraph 3 above, and except if excluded by OIG-HHS pursuant to 42 U.S.C. § 1320a-7(a). Nothing in this Paragraph precludes OPM from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 3, above.

7. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

8. Relators and their heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B), and, conditioned upon receipt of Relators' shares, Relators, for themselves individually, and for their heirs, successors, agents, and assigns, fully and finally release, waive, and forever discharge the United States, its officers, agents, and employees from any claims arising from or relating to 31 U.S.C. § 3730, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d) and (d)(1); from any claims arising from the filing of claims against BMS and Apothecon in the Civil Actions identified in Paragraphs II(C) through II(I); from any other claims for a share of the Settlement Amount; and in full settlement of any claims Relators may have under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the

Relators arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement. This Agreement does not resolve any claims the VAC 1 Relators, the VAC 2 Relators, Cokus, Richardson, Barlow or Piacentile may assert under 31 U.S.C. § 3730(d) for expenses, attorneys' fees, and costs; or any claims set forth in the Barlow, and Richardson Civil Actions that are explicitly preserved pursuant to the Stipulations of Dismissal described in Paragraph 14 below.

9. The VAC 1 Relators, the VAC 2 Relators, Cokus, Richardson, Barlow and Piacentile, on behalf of themselves, their heirs, successors, attorneys, agents, and assigns, agree that each party retains all of their rights pursuant to the False Claims Act on the issue of expenses, attorneys' fees, and costs under 31 U.S.C. § 3730(d), including the amount, if any, that shall be awarded arising from their claims against BMS and/or Apothecon in the Civil Actions and that no agreements concerning Relators' expenses, attorneys' fees or costs have been reached to date.

10. Upon execution of this Agreement by all parties, the United States will file Notices of Intervention and Declination in the Civil Actions wherein the United States will intervene as to claims asserted against BMS and/or Apothecon concerning the Covered Conduct as defined in Paragraph N of this Agreement and decline to intervene in other claims asserted against BMS and/or Apothecon in the Civil Actions.

11. In consideration of the obligations of BMS set forth in this Agreement, the VAC 1 Relators, the VAC 2 Relators, Cokus, Richardson, Barlow, and Piacentile, for themselves, and for their heirs, successors, attorneys, agents, employees, and assigns, hereby fully and finally

release, waive and forever discharge BMS and Apothecon, their current and former predecessors, successors, assigns, parents, subsidiaries, affiliates, divisions, officers, directors, agents and employees, from any claims or allegations that they asserted or could have asserted in the Civil Actions, but expressly reserve claims they may assert under 31 U.S.C. § 3730(d) for expenses, attorneys' fees, and costs. Barlow and Richardson reserve any claims set forth in their respective Civil Actions that are explicitly preserved pursuant to the Stipulations of Dismissal described in Paragraph 14 below.

12. In consideration of the obligations of BMS set forth in this Agreement, Forden, for herself, and for her heirs, successors, attorneys, agents, employees, and assigns, hereby fully and finally releases, waives and forever discharges BMS and Apothecon, their current and former predecessors, successors, assigns, parents, subsidiaries, affiliates, divisions, officers, directors, agents and employees, from any claims or allegations that she has asserted or could have asserted in the Civil Actions, including claims she may assert for expenses, attorneys' fees, and costs under 31 U.S.C. § 3730(d).

13. In consideration of the obligations of BMS set forth in this agreement, the VAC 1 Relators, the VAC 2 Relators, Cokus, Richardson, Barlow, Piacentile, and Forden, for themselves, and for their heirs, successors, attorneys, agents, employees, and assigns, hereby agree and represent that they will dismiss with prejudice any and all State (including the District of Columbia) qui tam actions that they have filed against BMS and/or BMS's present or former subsidiaries, including but not limited to Apothecon, Inc., consistent with each State's (including the District of Columbia's) agreement with BMS to dismiss such actions with prejudice.

14. Within seven (7) business days after the payment of the Federal Settlement Amount pursuant to this Agreement, the Parties will file Stipulations of Dismissal of the Civil Actions in the form of the Stipulations of Dismissal attached hereto as Attachments D through J. The federal claims in the Civil Actions shall be dismissed as to BMS and Apothecan effective upon receipt by the United States of the Federal Settlement Amount to the extent set forth in the Stipulations of Dismissal attached hereto. If the Court enters Orders of Dismissal that differ from the proposed Orders of Dismissal attached hereto as Attachments D through J, the Parties agree to take all reasonable and necessary steps to seek modifications of the entered Orders to conform with the attached Orders of Dismissal.

15. In consideration of the obligations of the United States set forth in this Agreement, BMS and Apothecan, on behalf of themselves and their predecessors, their current and former parents, affiliates, divisions, subsidiaries, successors and assigns fully and finally release, waive and discharge the United States, its agencies, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) which BMS or Apothecan have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to or arising from the Covered Conduct or the United States' investigation and prosecution of the Civil Actions identified in Paragraphs II(C) through (I) to the extent those Civil Actions are dismissed as to the United States.

16. In consideration of the obligations of the Relators set forth in this Agreement, BMS and Apothecan, on behalf of themselves and their predecessors, their current and former

parents, affiliates, divisions, subsidiaries, successors, and assigns, fully and finally release, waive, and discharge the Relators, and their successors, assigns, and agents from any claims they have asserted, could have asserted, or may assert in the future against the Relators arising from the filing of the portion of the Civil Actions identified in Paragraphs II(C) through (I) involving the Covered Conduct, and the United States' investigation and prosecution of those Civil Actions, to the extent those actions are dismissed with prejudice as to Relators, and the Covered Conduct, but expressly reserve any defenses BMS and Apothecon may raise to claims that Relators may assert under 31 U.S.C. § 3730(d) for expenses, attorneys' fees, and costs, and any claims or defenses that BMS or Apothecon may assert against Relators relating in any way to the claims set forth in the Civil Actions that are not dismissed as to Relators pursuant to the Stipulations of Dismissal described in Paragraph 14 above.

17. BMS and Apothecon waive and shall not assert any defenses they may have to criminal prosecution or administrative action relating to the Covered Conduct based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

18. The Settlement Amount that BMS must pay pursuant to Paragraph 1 above will not be decreased as a result of the denial of claims for payment now being withheld from payment by any State or Federal payer, related to the Covered Conduct; and BMS and Apothecon shall not resubmit to any State or Federal payer any previously denied claims, which

denials were based on the Covered Conduct, and shall not appeal or cause the appeal of any such denials of claims.

19. BMS agrees to the following:

a. Unallowable Costs Defined. All costs (as defined in the Federal Acquisition Regulation ("FAR"), 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of BMS, its predecessors, parents, divisions, subsidiaries, or affiliates, and its present or former officers, directors, employees, and agents in connection with the following shall be "unallowable costs" on Government contracts with DVA and other agencies and under the Medicare Program, Medicaid Program, TRICARE Program, and FEHBP: (1) the matters covered by this Agreement; (2) the United States' audit and civil and criminal investigation relating to matters covered by this Agreement; (3) BMS's investigation, defense, and any corrective actions undertaken in response to the United States' civil and criminal investigations in connection with the matters covered by this Agreement (including attorneys' fees); (4) the negotiation and performance of this Agreement and the Medicaid State Settlement Agreement; (5) the payments made to the United States or any State pursuant to this Agreement or the Medicaid State Settlement Agreement and any payments that BMS may make to any qui tam plaintiffs; and (6) the negotiation of and obligations undertaken pursuant to the CIA to: (a) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and (b) prepare and submit reports to OIG-HHS. However, nothing in this Paragraph affects the status

of costs that are not allowable based on any other authority applicable to BMS (All costs described or set forth in this Paragraph are hereafter, "Unallowable Costs").

b. Future Treatment of Unallowable Costs. If applicable, these Unallowable Costs shall be separately estimated and accounted for by BMS and BMS shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by BMS, its predecessors, parents, divisions, subsidiaries, or affiliates to Medicare, Medicaid, TRICARE, FEHBP or DVA.

c. Treatment of Unallowable Costs Previously Submitted for Payment. If applicable, BMS further agrees that, within 60 days of the Effective Date of this Agreement, it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, DVA, and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by BMS, its predecessors, parents, divisions, subsidiaries, or affiliates and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. BMS agrees that the United States, at a minimum, shall be entitled to recoup from BMS any overpayment, plus applicable interest and penalties, as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or of the affected agencies. The United States reserves its rights to disagree with any calculations submitted by BMS, its predecessors, parents, divisions, subsidiaries or affiliates on the effect of inclusion of Unallowable Costs on BMS's or its predecessors', parents', divisions', subsidiaries' or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or re-examine BMS's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

20. BMS and Apothecon waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors. BMS and Apothecon waive any causes of action against these beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims for payment covered by this Agreement.

21. BMS expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (a) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to BMS within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a

contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity that BMS was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C.

§ 548(a)(1).

22. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, BMS commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of BMS's debts, or seeking to adjudicate BMS as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for BMS or for all or any substantial part of BMS's assets, BMS agrees as follows:

a. BMS's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and BMS shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) BMS's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) BMS was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to BMS.

b. In the event that BMS's obligations hereunder are avoided for any reason, including, but not limited to, the exercise of a trustee's avoidance powers under the Bankruptcy

Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against BMS for the claims that would otherwise be covered by the releases provided in this Agreement. If the United States chooses to do so, BMS agrees that, for purposes only of any case, action, or proceeding referenced in the first clause of this Paragraph, (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude BMS from participation in Medicare, Medicaid, or other federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. Section 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that BMS will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; (ii) that BMS will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings which are brought by the United States within 30 calendar days of written notification to BMS that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available before July 1, 2003; and (iii) the United States and the Participating States have valid claims against BMS in the aggregate amount of at least \$499,000,000, and they may pursue their claims, inter alia, in the case, action or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding; and

c. BMS acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

23. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

24. Nothing in this Agreement constitutes an agreement by the United States concerning the characterization of the amounts paid hereunder for purposes of the Internal Revenue laws, Title 26 of the United States Code.

25. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement (including Relators' claims under 31 U.S.C. § 3730(d) for expenses, attorneys' fees, and costs) shall be the United States District Court for the District of Massachusetts, except that disputes arising under the CIA shall be resolved exclusively through the dispute resolution provisions set forth in the CIA.

26. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

27. The individuals signing this Agreement on behalf of BMS and Apotecocon represent and warrant that they are authorized by BMS and Apotecocon to execute this Agreement. The individual(s) signing this Agreement on behalf of a Relator represent and warrant that they are authorized by that Relator to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

28. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

29. This Agreement is binding on BMS's successors, transferees, heirs, and assigns.

30. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

31. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

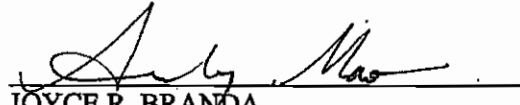
32. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date"). Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

33. BMS agrees to cooperate fully and truthfully with the United States' investigation of the Covered Conduct, as that pertains to individuals and entities not released in this Agreement. Upon reasonable notice, BMS shall make reasonable efforts to facilitate access to, and encourage cooperation of, its directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals, and shall furnish to the United States, upon reasonable request, all non-privileged documents and records in its possession, custody, or control relating to the Covered Conduct.

UNITED STATES OF AMERICA

PETER D. KEISLER
Assistant Attorney General

By:


JOYCE R. BRANDA
Director

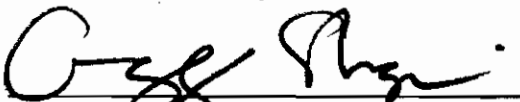
Dated:

9/27/07

ANDY J. MAO
Senior Counsel for Health Care Fraud and Elder Justice
Commercial Litigation Branch, Civil Division
United States Department of Justice

MICHAEL J. SULLIVAN
United States Attorney, District of Massachusetts

By:

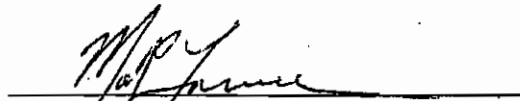

JENNIFER C. BOAL
Civil Chief
GREGG SHAPIRO
Assistant U.S. Attorney
United States Attorney's Office
District of Massachusetts

Dated:

9/28/07

R. ALEXANDER ACOSTA
United States Attorney, Southern District of Florida


By:


MARK LAVINE
Assistant U.S. Attorney
United States Attorney's Office
Southern District of Florida

Dated:

9/21/07

By:


EUGENE M. THIROLF
Director
JEFFREY I. STEGER
Trial Attorney
Office of Consumer Litigation, Civil Division

Dated:

UNITED STATES OF AMERICA

PETER D. KEISLER
Assistant Attorney General

By:

Dated:

JOYCE R. BRANDA
Director
ANDY I. MAO
Senior Counsel for Health Care Fraud and Elder Justice
Commercial Litigation Branch, Civil Division
United States Department of Justice

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United States Attorney's Office
District of Massachusetts

R. ALEXANDER ACOSTA
United States Attorney, Southern District of Florida

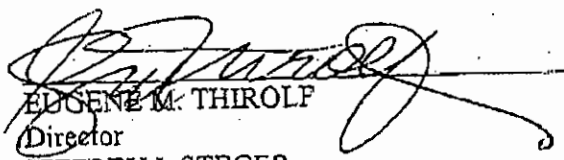
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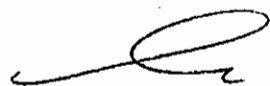
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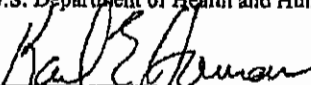
MARK LAVINE
Assistant U.S. Attorney
United States Attorney's Office
Southern District of Florida

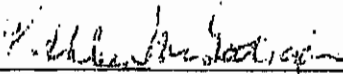
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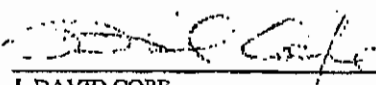
Dated:


EUGENE M. THIROLF
Director
JEFFREY I. STEGER
Trial Attorney
Office of Consumer Litigation, Civil Division

By:  Dated: 9/26/07
 GREGORY D. DEMSKE
 Assistant Inspector General for Legal Affairs
 Office of Counsel to the Inspector General
 Office of Inspector General
 U.S. Department of Health and Human Services

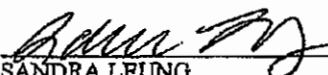
By:  Dated: SEP 20 2007
 KARL E. HANSEN
 Acting Deputy General Counsel
 TRICARE Management Activity
 United States Department of Defense

By:  Dated: 9/26/2007
 KATHLEEN McGETTIGAN
 DEPUTY ASSOCIATE DIRECTOR
 Center for Retirement & Insurance Services
 United States Office of Personnel Management

By:  Dated: 9/26/2007
 J. DAVID COPE
 Assistant Inspector General for Legal Affairs
 United States Office of Personnel Management

BRISTOL-MYERS SQUIBB COMPANY

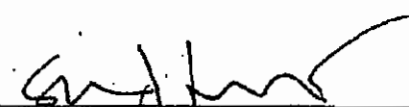
By:


SANDRA LEUNG
Senior Vice President, General Counsel and Secretary
Bristol-Myers Squibb Company

Dated:

9/26/07

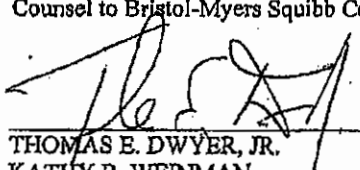
By:


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555 Thirteenth St., NW
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Dated:

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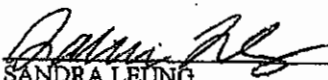

THOMAS E. DWYER, JR.
KATHY B. WEINMAN
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APOTHECON, INC.

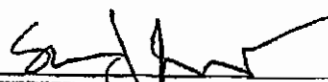
By:


SANDRA LEUNG
Secretary
Apothecon, Inc.

Dated:

9/26/07

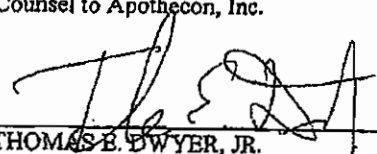
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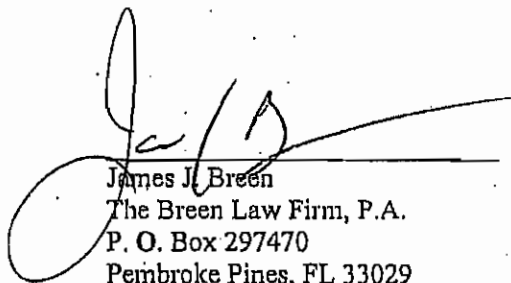

THOMAS E. DWYER, JR.
KATHY B. WEINMAN
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RELATORS

By:


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Jones, John M. Lockwood, and Luis B. Cobo

By:

T. Mark Jones, President
Ven-A-Care of the Florida Keys, Inc.

Dated:

By:

Zachary T. Bentley

Dated:

By:

T. Mark Jones

Dated:

By:

John M. Lockwood

Dated:

By:

Luis B. Cobo

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By:

Carol Forden

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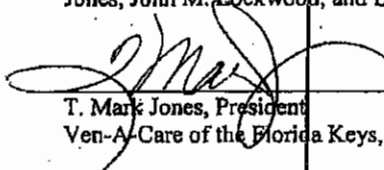
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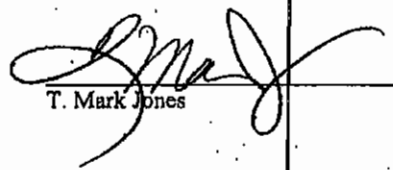
Dated: 9/20/07

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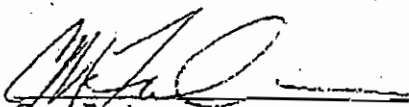
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Marian C. Ainsle

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Joseph Piacentile

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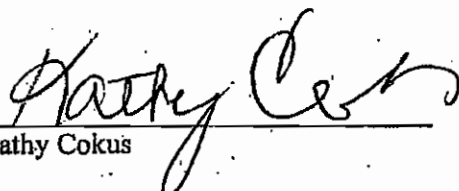
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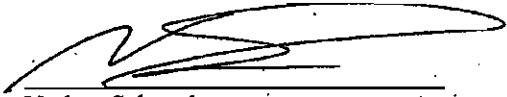
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Dated: *Sept. 20, 2007*

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By:

Joseph Piacentile

Dated:

9/19/07

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Dated:

9/19/07

By:

Kirk E. Chapman

Kirk E. Chapman
Milberg Weiss LLP
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Dated:

September 20, 2007

By:

Phillip Barlow

Dated:

By:

Thomas M. Greene
Greene & Hoffman
125 Summer Street - Suite 1410
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Counsel to Phillip Barlow

Dated:

By:

Daniel Richardson

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By:

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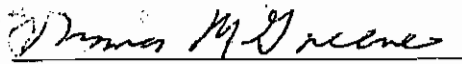
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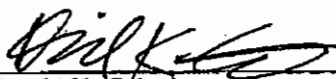
Dated:

By:


Daniel Richardson

Dated: 9/20/2007

By:


David K. Colapinto
Kohn, Kohn & Colapinto, LLP
3233 P Street, NW
Washington, DC 20007-2756
Counsel to Daniel Richardson

Dated: 9/20/2007

ATTACHMENT A ("Apothecon Covered Drugs")

Albuterol
Amantadine
Amoxicillin
Captopril
Captopril/HCTZ
Cefaclor
Cefadroxil
Cefanex
Cephalexin
Doxycycline
Doxycycline Hyclate
Estradiol
Etodolac
Trimox
Polymox
Potassium Chloride

ATTACHMENT B

Tequin
Pravachol
Glucovance
Avapro
Avalide
Plavix
Serzone
Glucophage
Glucophage XR
Abilify
Monopril
Monopril HCT
Metaglip
Avandia
BuSpar
Pravigard
Cefzil
Reyataz
Videx
Videx EC
Zerit
Sustiva
Dovonex
Taxol
Paraplatin
Zelnorm
Vaniqa
Maxipime
Azactam
Coumadin
Stadol NS

ATTACHMENT C ("AWP Drugs")

Amikin
Blenoxane
Cytosan
Mutamycin
Rubex
Taxol
Vepesid